

The Consumer Voice in Europe

URGENT NEED FOR BETTER OVERSIGHT OF CARS –

A consumer view on the Commission proposal on type approval and market surveillance



Contact: Sylvia Maurer/Chris Carroll – sustainability@beuc.eu

BUREAU EUROPÉEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND
Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • www.twitter.com/beuc • consumers@beuc.eu • www.beuc.eu
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Why it matters to consumers

Consumers have to be sure that the products they buy are always safe for use and comply with all EU legislation. As automobile safety is of particular importance, all car models have to be approved by public authorities before they can be put on the streets. The pre-marketing check includes safety aspects as well as checking emission limit values such as nitrogen oxides and carbon dioxide – chemicals which are known to have very negative impact on human health and the environment.

Concerning air pollutant emissions and fuel consumption, passenger cars in the EU rarely perform in real life as indicated to consumers in the official figures declared by car makers. This leads to concerns about consumers being misled about the performance of the cars they are buying, but also puts their health at risk because of higher air pollutant emissions and they can end up paying more on fuel costs than otherwise expected. Existing EU rules in this area are too weak and reforming the way that cars are approved before going on sale and the related market surveillance activities is essential in order to restore consumer trust in the automotive sector.

Headline recommendations

The EU should:

- Establish a stronger system for pre-market (type approvals) and post-market (market surveillance measures) controls. Only a combination of checking new car models and testing cars on the road will ensure that consumer trust in the car sector can be reestablished.
- Allow for market surveillance measures to be taken at the European and national level to ensure a more coherent market surveillance system across the EU and in turn allow consumers in all Member States to rely on the safety and conformity of the cars they buy.
- Define the minimum number of cars which have to be re-tested by Member State and/or EU authorities.
- Clarify the obligations of the different public and private bodies involved in approving and checking a cars' compliance to avoid any conflict of interest. All private technical services which check car models must be completely independent from car manufacturers and parts suppliers.
- Ensure that penalties will apply to all forms of non-compliance including where the fuel consumption performance for consumers widely departs from official test figures.
- Provide enhanced transparency in the type approval process to ensure greater accountability of EU and Member State authorities, car manufacturers and technical services.
- Put in place a more transparent recall process to ensure that owners of affected vehicles are kept better informed about corrective measures and that consumers receive adequate compensation where malpractice has occurred.

Summary

On January 27, 2016, the European Commission issued a proposal to reform existing EU rules surrounding the type approval and market surveillance of motor vehicles. BEUC welcomes this proposal as it provides a unique opportunity to remove two major shortcomings in current legislation. First, a stronger and more harmonised European system of overseeing the automotive sector should deter car makers from manipulating type approval tests and in turn reduce the risk of major scandal from developing, such as the present day “dieselgate’ saga. Secondly, it should ensure that consumers are provided with more realistic information about the emissions and fuel consumption performance of passenger cars, criteria which are important to consumers during the purchase decision process of a vehicle.

In this position paper, we outline how a more harmonised EU system for market surveillance should be shaped. We make recommendations for what institutional structures, new competences and instruments should be created at EU and national level. We also give recommendations on how the current structures of approving new car models has to be changed in order to prevent conflicts of interest among different players which are preventing at the moment a satisfactory outcome for European consumers. We call for more transparency, ask for effective penalties and better recall procedure to be put in place.

The current system needs a fundamental overhaul to ensure that a transparent and reliable regulatory framework will be put in place that provides for a high level of safety and both health and environmental protection.

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1. Introduction

General remarks

For many years, BEUC has called on the EU and its Member States to improve the capacities, procedures, transparency rules, penalty systems and to harmonise market surveillance at EU level to make sure consumers can have trust in the products they buy. **We insist that the EU must not only create better market surveillance procedures for cars but for all consumer products**¹. “Dieselgate” is only one visible sign of insufficient market surveillance, however European consumers are exposed to thousands of dangerous and non-compliant products - as the RAPEX database demonstrates year in, year out.

Problems with current day market surveillance of cars

One of the main weaknesses of the existing EU type approval framework and associated EU market surveillance legislation is for instance the **lack of specific requirements for independent conformity testing of passenger cars**, either at the Member State or European level. This means there is little incentive on authorities to conduct additional conformity checks and available evidence indicates that only very few Member States have conducted such tests². Without such checks, it means that in most instances a car maker’s own self-verification process³ to check whether post production vehicles comply with type approval vehicles is, de-facto, the end of the road as far as conformity testing is conducted. Furthermore, evidence shows how EU legislation in the area of vehicle testing is open to abuse due to a **strong degree of subjective interpretation in the rules and a considerable conflict of interest resulting from the competition between technical services and/or type approval authorities across Europe**⁴.

The Commission Proposal is a big step in the right direction

With the publication of a draft regulation on the type approval and market surveillance of motor vehicles, **the EU has another chance to remove existing weaknesses in the market access system of cars**. We strongly welcome the European Commission’s proposal as we see it as the basis for a better system to counter the current weaknesses of the legal framework and the negative experiences of the dieselgate scandal. The draft legislation proposes many valuable changes compared to the current system although there are a number of areas which need strengthening in order to reliably prevent another “dieselgate” like scandal in the future and to ensure that consumer rights will be respected in the automotive sector.

2. A Regulation will be more efficient and effective than a Directive

BEUC welcomes that the proposal takes the form of a Regulation. A Regulation imposes rules and requirements that are applicable at the same time throughout the Union, and which do not give room for divergent transposition by Member States.

¹ From a consumer point of view it is unacceptable that the draft legislation for a Consumer Product Safety Regulation and a Market Surveillance Regulation is stuck in Council for over three years by now only because Member States are unable to find a compromise about one provision which is completely irrelevant for safety, i.e. the question if products need mandatorily being labelled with their origin (“Made in ...”).

² ICCT (2015) [The future of vehicle emissions testing and compliance](#)

³ IDEM, such a process might not even involve any testing, but rather that it is adequate enough for a car maker to demonstrate that it has a quality-management system (such as ISO 9001) in place.

⁴ TNO (2012) http://ec.europa.eu/clima/policies/transport/vehicles/cars/docs/report_2012_en.pdf

3. A more harmonised system with higher capacities at EU level

Currently, market surveillance activities are undertaken by Member States exclusively and individually at the national level as market surveillance falls under shared competence. At the national level there are in many cases insufficient resources for market surveillance activities which in turn has led to inconsistencies in how products are policed on the market across the EU⁵. As a result, consumer expectations for safe and compliant products are not always met. We consider there is an urgent need to establish a European framework for market surveillance in order to ensure a coherent approach to market surveillance activities across all EU Member States. It is also essential to make more financial and human resources available for market surveillance activities across the EU⁶.

3.1. Setting a specified number of conformity tests

The draft legislation foresees as a new task for the European Commission (Art. 9.1): to carry out tests and inspections of cars to verify if they meet all legal requirements. These inspections can be done on both new cars which have not yet been sold to the consumer and cars which are already being used by consumers on our streets and will be performed in addition to the compliance checks of national market surveillance authorities (Art. 8). **BEUC strongly welcomes this requirement** as it will increase market surveillance capacities, will provide better evidence and improve implementation of legislation. However, without a concrete target for testing, this requirement will remain too unspecific.

We recommend:

- **Establishing a binding EU wide quantitative target** (to be met by Member State authorities and the EU Joint Research Centre – see below) for the number of inspections⁷. We suggest that authorities inspect every year at least 15% of all new car models which have been approved and produced (conformity of production). Authorities should also conduct tests on a meaningful number of vehicles that are on the road (in-use surveillance) each year and which should amount to no less than 150 tests across the EU. Authorities should publish on a yearly basis the results of all such tests carried out⁸.
- **Developing criteria for the selection of the cars for testing.** In the US, the Environment Protection Agency selects for instance 10% out of all current models at random for testing. Another 5-10% of vehicles will be selected based on the following criteria: 1) cars with a new engine or technology, 2) cars with very high or very low fuel economy, 3) cars with a very high sales volume and 4) additional criteria such as past history, tips from consumers, EPA staff concerns or independent research bodies. BEUC recommends to follow these or similar criteria.

⁵ European Parliament (2011) Market Surveillance in relation to type approval authorities.

⁶ See ANEC/ BEUC (2013): Position paper on the European Commission proposal for a regulation on market surveillance of products. Key issues from a consumer perspective regarding the Product Safety and Market Surveillance Package, <http://www.beuc.eu/publications/2013-00393-01-e.pdf>.

⁷ Such a target would be shared among Member States and the JRC in order not to overly burden those Member States who lack adequate resources for market surveillance activities.

⁸ Until recently, both Germany and Sweden conducted approximately 15 in-use conformity tests on vehicles per year. In the US, between 100-150 conformity tests have been conducted per annum in recent years and approximately 15% of vehicles are also 'confirmatory tested' ([ICCT, 2015](#)). The ICCT has also recommended a figure of between 10-20% of new vehicle models to be tested per annum in Europe in their [reply to the EP's EMIS Committee](#)

- **Sharing the burden among authorities and avoiding double testing of cars.** In the implementation of the EU's chemicals legislation, Member States and the Commission agree for instance regularly on a multi-annual "Community Rolling Action Plan" (CoRAP) through which the national environment protection agencies are in charge of assessing the hazards of priority chemicals. A similar work plan should be established in which Member States and the Commission commit to investigate specific car models. Such a plan should be made publicly available and developed under the proposed forum (see further comments below).
- **Ensuring adequate EU level competence** – in the absence of a dedicated EU agency⁹ for the implementation of this legislation - the European Commission's Joint Research Center (JRC) should carry out conformity tests. The JRC does have adequate experience in the areas of vehicle testing and ensuring that car makers are meeting EU legislative requirements, such as: Testing vehicles in laboratory conditions and using Portable Emissions Measurement Systems (PEMS) equipment for testing vehicles on the road; and conducting assessments of passenger car technologies that can be considered as "eco-innovations" under EU passenger car CO2 legislation.

3.2. Better coordination by establishing an EU Forum on Type Approval and Market Surveillance of motor vehicles

Market Surveillance in Europe is often lacking coordination and information exchange among Member States authorities and with the European Commission. BEUC has for instance been struggling in 2015/2016 to receive information from the European Commission on the different states of play in the Member States with regard to the recall of Volkswagen cars. BEUC therefore welcomes the idea of establishing a 'Forum for Exchange of Information on Enforcement' however we think it should go beyond the mere goal of exchanging information but also allow for greater coordination between the activities of Member States and the European Commission with regard to type approval and market surveillance.

We recommend:

- Stakeholders, including consumer organisations, should be allowed to join the Forum as consumer organisations might be able to feed important information from car testing or consumer complaints into this Forum. Article 10 (1) should be changed as follows: "This Forum shall be composed of members appointed by the Member States, as well as representatives of consumer organisations, independent research associations and industry."
- All decisions taken by the Forum should be made public including on recalls.
- The Forum keeping an inventory of what can be considered as 'state-of-the-art' technologies for the purpose of ensuring that all Type Approval Authorities (TAAs) and Technical Services (TSs) are fully informed of technology developments, including emissions control systems (See Section 6), in the automotive sector.
- Good coordination of market surveillance for cars should be ensured with existing tools of market surveillance for consumer products. The EU Rapid Warning System (RAPEX) and ICSMS (Information and Communication System on Market Surveillance) which are used to exchange information about dangerous products including unsafe cars are currently not mentioned in the type approval legislation – a shortcoming which should be addressed.

⁹ BEUC has previously recommended setting up a dedicated EU agency for the oversight of cars, see: BEUC (2015) [The Great Fuel Consumption Scam](#)

- IT-tools should be adapted or established which allow Member States and the Commission to exchange information about non-safety related aspects which are also important for market surveillance such as emissions testing data.
- Information should be exchanged as quickly as possible about granted or refused type approvals than only every three months (see article 25.2). Member States should inform each other much more timely by putting every type approval decision into a database within 10 working days of the decision.
- An EU portal for consumers to report real world performance of their vehicles (in a similar way to that of sites such as Spritmonitor.de) should be created and allow for reporting complaints about performance issues including safety and emissions/fuel consumption performance of their vehicles)¹⁰. Such information should also be used by authorities for the purpose of assessing which vehicles should undergo conformity testing.

3.3. Better oversight through joint inspections and peer reviews

As things stand, it is the responsibility of Member State authorities to ensure that technical services have in place systems and the necessary expertise to conduct type approval tests. It is also the case that type approval authorities are not inspected to ensure that EU legislation is being implemented in a harmonised manner. The Commission Proposal includes requirements for national type approval authorities and technical services to be inspected by other Member States and the Commission (See Art. 71.8 and 77) Although this approach is welcomed, the language in the existing proposal needs further safeguards.

We recommend:

- Inspections of technical services and type approval authorities must include witnessing actual type approval tests. The existing text is not specific enough, but it must be clear for the purpose of ensuring adequate oversight, that an actual type approval test is witnessed by other Member State and Commission officials during inspections. Such a requirement is essential because it is the actual testing of the vehicles where concerns about an uneven playing field exist.
- Assessments of both technical services and type approval authorities should be conducted always by at least two other Member State representatives and Commission staff.
- The Forum for Type Approval and Market Surveillance of Motor Vehicles should have all reports of assessments made available to it and such reports should also be made publically available.
- If type approval authorities or technical services are found to be implementing EU legislation incorrectly in the findings of the inspections, either body should be subject to penalties and/or must take immediate action to resolve the problem.

¹⁰ Such a portal would mirror the US NHTSA Safercar.gov website which allows for consumers to raise complaints with authorities.

4. Ensuring independent testing

Many car manufacturers choose to have their cars tested at their own laboratories. Allowing for this raises questions about the impartiality of the system, and considering that car makers can use complicated software (such as Volkswagen) to circumvent emissions tests makes this all the more alarming. Allowing cars to be tested in car maker owned laboratories is particularly concerning when considering the possible influence of a car maker/components manufacturer on the TAA/TS personnel when vehicles are being tested.

Moreover, there is substantial competition between type approval authorities and/or private technical services to attract vehicle testing business across Europe. In many cases car makers pay the TAAs and/or the TSs directly for the work they carry out.

Reports have indicated that some Member State authorities are largely funded by the work they carry out on overseeing type approval testing, such as in the UK where for instance 70% of the total income of the UK authority comes from type approval work¹¹. Private companies who undertake type approval services can also be directly owned by car manufacturers¹². Such cases in themselves make decision making vulnerable to conflicts of interest, being that financial payments are made for the services of conducting type approval tests and granting approval. For this reason we have strong concerns about the level of impartiality of the current system across the EU.

We recommend:

- Carrying out type approval and conformity testing for safety, fuel consumption, emissions and other compliance aspects of cars only in independent third-party laboratories.
- Adapting article 73.2: 'A technical service shall be an independent third-party organisation or body that is not that has no legal ties to any manufacturer or parts supplier, nor has itself any involvement involved in the process of design, manufacturing, supply or maintenance of the vehicle, system, component or separate technical unit it assesses, tests or inspects.'
- We agree with the principle laid out in Article 30 that direct payments between car makers and technical services should not be allowed. In doing so, this approach ensures there is less conflict of interest during type approval and any conformity testing that takes place. All manufacturers need to provide upon request vehicles free of charge to the inspection authorities.

5. Clearer rules along the supply chain

Compared to the existing legislation, the new draft clarifies much better the roles and obligations of manufacturers, importers, distributors and retailers along the supply chain (Articles 11-19). The provisions should swiftly be agreed and implemented but the time in which information needs to be kept should be longer.

¹¹ UK Department for Transport (2015) [Vehicle Certification Agency: Annual Accounts and Reports](#)

¹² For instance, the UK based company Millbrook, who provide type approval services, were until recently (part) owned by General Motors [Millbrook \(2013\)](#)

We recommend:

- As cars have a lifetime in most cases of more than ten years, car makers should be required to keep technical documentation available for market surveillance authorities at least for fifteen years. As documentation can be stored nowadays without major costs electronically, it would not cause significant burden on manufacturers. The information already exists; it should just be saved longer.

6. Specifying “defeat devices” in the type approval legislation

From a consumer point of view it is unacceptable that an enormous number of cars contain defeat devices which recognise when a car is being tested in a laboratory on emissions and switches therefore only for the time of testing into a cleaner mode. Even though the use of defeat devices are illegal based on Euro 5 and 6 legislation, the German competent body (Kraftfahrtbundesamt) has not yet removed the type approvals and certificates of conformity for all cars which contain defeat devices.

Unlike in the US, where the EPA is seeking to strictly enforce legislation, the defeat device scandal in Europe has up until the present day led to no legal consequences for car manufacturers in Europe. A debate has been forged by car makers concerning the wording of EU legislation and car makers have in essence suggested there are loopholes that allow them to use defeat devices legally¹³. There is no doubt that all cars which contain defeat devices and which in turn allow for lower emissions in the laboratory but higher emissions on the road should be illegal.

We agree with the findings of the legal analysis compiled by the scientific research service of the German Parliament for the Greens¹⁴ which emphasises that the primary purpose and sense of the legislation was to achieve real reductions of emission values from vehicles to effectively improve air quality. This in itself prohibits the use of any defeat device which allows for emissions to be artificially controlled in a laboratory. Manufacturers also have to ensure that emissions control systems work reliably under normal conditions¹⁵.

Regulation 715/2007 concerning vehicle emissions (Euro 5/6) specifies as an exemption that defeat devices are exceptionally allowed if it is necessary to protect the motor from damage or accident and to ensure safe use of the vehicle. However, such a use can never be permanent but needs to be strictly limited in time as otherwise a car would run counter to the overall goal of the legislator to protect human health and the environment. This time limited exemption also has to be the case as regard low ambient temperatures. In conclusion, the presence of a defeat device which switches off emissions control systems during normal use situations is not legal and manufacturers cannot refer to the need to protect the motor for a device during normal conditions¹⁶.

¹³ For a detailed legal analysis see: Defeat devices under the U.S. and EU passenger vehicle emissions testing regulation, Briefing March 2016, The International Council on Clean Transportation (ICCT).

¹⁴ http://oliver-krischer.eu/fileadmin/user_upload/gruene_btf_krischer/2016/WD_7-031-16_Abschalteinrichtungen_in_Pkw_-_Reichweite_des_Verbots_nach_E_.pdf and <http://oliver-krischer.eu/detail/nachricht/abgasaffaere-gutachten-zu-illegalen-abschalteinrichtungen-zeigt-versaeumnis-der-bundesregierung.html>

¹⁵ Some car makers have allegedly calibrated vehicles so that emissions control systems switch off when outside temperatures reach a certain level. For instance, it has been claimed that some vehicle's emissions control systems switch off at temperatures below 10°C or even 17 °C. As a representation of the impact this might have within the EU, in Berlin on 296 days per year (2015) the average day temperature is under 17°C and on 175 days it is under 10 degrees.

¹⁶ http://oliver-krischer.eu/fileadmin/user_upload/gruene_btf_krischer/2016/WD_7-031-16_Abschalteinrichtungen_in_Pkw_-_Reichweite_des_Verbots_nach_E_.pdf and <http://oliver-krischer.eu/detail/nachricht/abgasaffaere-gutachten-zu-illegalen-abschalteinrichtungen-zeigt-versaeumnis-der-bundesregierung.html>

The new legislation must therefore 1) strictly and unequivocally define defeat devices, 2) foresee strict provisions on removing the type-approval certificate in case cheating devices are being used 3) ensure meaningful penalties for non-compliant manufacturers.

We recommend:

- The legislation should clearly state that the use of defeat devices is illegal and in turn adding the following definition to article 3:

“Defeat device means any element of design which senses temperature, vehicle speed, engine speed (RPM), transmission gear, manifold vacuum or any other parameter for the purpose of activating, modulating delaying or deactivating the operation of any part of the emission control system, that reduced the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use”.

- The legislation should state that the manufacturer must disclose to relevant authorities and technical services, before type approval testing is conducted, of the presence of any defeat device. If such information is provided, the car manufacturer must prove to the relevant authorities and technical services that this alternative calibration is necessary and that no viable alternative solutions exist. Authorities must then in turn verify whether such claims are legitimate or not and in turn approve/reject those claims.
- It is essential that clear guidance is given concerning the exceptions to rule concerning the use of defeat devices and that the design of vehicles, parts and components’ cannot incorporate strategies that unnecessarily reduce the performance exhibited during relevant test procedures when the vehicles, parts and components are operated under conditions that may reasonably be expected to be encountered in normal operation and use.
- Car makers must be obliged to use state-of-the-art technologies available on the market that can reduce emissions in both controlled settings and real world conditions without causing consequential damage to the vehicle engine. The Forum for Type Approval and Market Surveillance should share information about what technologies are considered state-of-the art to ensure that car makers are making the best use of state-of-the-art technologies.
- Mentioning in article 89.2 on penalties that manufacturers using illegal defeat devices will be subject to penalties, fines and compensation to consumers.

7. Stronger tools to detect fraud

It has been reported in the media that Volkswagen has destroyed data and documents when the US Environment Protection Agency wanted to search Volkswagen premises. To limit such cover-up measures by companies, market surveillance authorities should be enabled to enter companies’ premises for market surveillance investigations without preliminary announcement.

We recommend:

- Complementing article 6 as follows: « Member States shall take the necessary measures to ensure that market surveillance authorities may, where they consider it necessary and justified, to be entitled to enter the premises of economic operators **without prior notice** and seize the necessary samples of vehicles, systems, components and separate technical units for the purposes of compliance testing.”

8. Better democratic control

The car sector is a particularly sensitive area for consumers as our quality of life depends on mobility and of course purchasing and using a vehicle is a major cost for consumers. We therefore insist that the legislative framework should be sufficiently clear and precise, thereby avoiding the need for delegated acts and implementing acts as much as possible. However, where there is a need for additional rules in comitology, the European Parliament should strongly be involved in the democratic oversight and implementation of this legislation. This latter point is essential and was highlighted during the agreement on NOx ‘not-to-exceed’ limits made between the Commission and Member States in 2015. Although, ultimately, the Parliament accepted this agreement through an implementing measure, without the threat of the Parliament vetoing decisions taken behind closed doors between Commission and Member State officials, there is the potential for the Commission and Member States to go beyond their mandate. The additional scrutiny that the Parliament can apply through delegated acts, as opposed to weaker implementing acts, is vitally important to ensure greater democratic legitimacy in the decision making process.

We recommend using delegated acts instead of implementing acts in the following articles:

- **Article 8.10:** ‘The Commission ~~may~~ shall be empowered to adopt ~~implementing~~ delegated acts to lay down the criteria for setting out the scale, scope and frequency with which the compliance verification checks of samples taken referred to in paragraph 1 have to be performed. ~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).~~ The Commission shall be empowered to adopt delegated acts in accordance with Article 88...
- **Article 9(4):** ‘Vehicle manufacturers shall make public data which are needed for the purpose of compliance verification testing by third parties, including ‘road load test data’. The Commission shall be empowered to adopt ~~implementing~~ delegated acts in order to define the data to be made public and the conditions for such publication, subject to the protection of commercial secrets and the preservation of personal data pursuant to Union and national legislation. ~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).~~ The Commission shall be empowered to adopt delegated acts in accordance with Article 88...
- **Article 91:** ‘The Commission ~~may~~ shall be empowered to adopt ~~implementing~~ delegated acts in order to determine the verification procedures referred to in points (a) and (b) and any action necessary to take into account the result of those verifications. ~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article [...].~~ The Commission shall be empowered to adopt delegated acts in accordance with Article 88...

9. Enhancing transparency

Another weakness of the existing type approval process is the lack of publically available information about vehicle testing. Cars are tested on an outside track (commonly referred to as either the 'road load test' or the 'coast down test') in order to understand the sorts of forces applied on the vehicle in the 'real world'. The information (known as the 'road load coefficients') acquired from this is then used to set up the laboratory conditions with the aim of representing real life conditions.

The data gathered from the road load test is very important, as it will impact on the levels of air pollutant emissions and fuel consumption of a vehicle when tested in the laboratory. There are concerns that cars are being tested in unrepresentative conditions (i.e. quality of road surface/weather etc.¹⁷) which in turn has allowed for optimum low air pollutant and low fuel consumption settings in the laboratory. In the EU, information gathered from the road load tests is not publically available (In the US the information is publically available¹⁸), and therefor prevents suitable verification checks.

A wider concern about vehicle testing is the existing fundamental lack of transparency generally with the type approval process across Europe. It is difficult to access the following information (non-exhaustive list):

- The number of type approval tests conducted per year within each Member State;
- The vehicle types that are tested within each Member State;
- Knowing which authorities and technical services have overseen the type approval tests for each vehicle type;
- Knowing how many and which vehicle groups have had a type approval rejected and the reasons for these failings.

By ensuring greater transparency in this area, it would not only assist independent organisations and consumer associations in conducting research in the area of type approval but it would also allow for greater accountability. The ongoing emissions scandal has shown how difficult it is to understand where type approval for specific vehicles has been conducted and in turn has made it difficult for consumer organisations to hold decision makers to account.

We recommend amending the following articles:

- **Article 6 (6):** 'The Member State concerned shall make a ~~summary~~ full report of the results accessible to the public, in particular the number of type-approval granted and rejected and the identity of the corresponding manufacturers and vehicle types.'
- **Article 8 (8):** 'The market surveillance authorities of different Member States shall coordinate their market surveillance activities, cooperate with each other and share with each other ~~and with~~, the Commission and make publically available, at least every two years, the results thereof, including information about the scope, scale and results of their market surveillance activities.'
- **Article 71 (9)** should be amended as follows: 'The outcome of the peer-review shall be communicated to all Member States and to the Commission and a ~~summary~~ full report of the outcome shall be made publically available.'

¹⁷ TNO (2012) http://ec.europa.eu/clima/policies/transport/vehicles/cars/docs/report_2012_en.pdf

¹⁸ ICCT (2015) [The Future of Vehicle Emissions Testing and Compliance](#)

- **Article 80 (3)** should be changed as follows: 'The reports shall contain a full summary of the assessment which shall be made publically available.'

Concerning access to the software of a vehicle. **BEUC supports Article 23 (4), which would ensure that type approval authorities and technical services can have access to the software and algorithms of a vehicle.** This is essential, considering the Volkswagen defeat device scandal.

10. Data protection and access

As part of an ever-increasing digitalization in the automotive sector (such as networked vehicle functions and the trend towards connected and automated driving), data protection and cybersecurity play a very important role in protecting consumers and fostering trust. In order to do so, connected and automated vehicles must be fully compliant with the General Data Protection Regulation (Regulation 2016/679) and the e-Privacy Directive (Directive EC/58/2002). Additional specific measures in the Commission's draft legislation are needed to ensure consumers' rights are adequately protected and that the proposed Regulation adequately accounts for future developments with connected and autonomous driving.

In addition, it is important to ensure that a healthy level of competition is ensured within the repair and maintenance sector so as to provide consumers with a good level of choice of service providers. With cars becoming more connected and access to data becoming of greater importance to repair and maintenance providers, it is essential that all providers can gain easy access to relevant data in order to allow for a competitive market.

We recommend the following:

- Automotive manufacturers must provide evidence during the course of type approval that the road users will be protected against misuse of data that is collected during and after a trip. This includes the protection of data against forgery, manipulation and unauthorized use in the course of data collection, transmission, storage and use.
- Automotive manufacturers must offer appropriate systems that allow the owner of a vehicle to decide to the extent to which his/her data which is utilised during and after the trips are made, and how the data is transmitted, stored and used. For the owner of a vehicle, the control of these settings must easily understandable. Annex IV should be supplemented by appropriate requirements for data protection and data security.
- Automotive manufacturers must provide evidence during the course of type approval that nondiscriminatory and easy access to vehicle data, and without jeopardising the privacy of the vehicle owner's data, will be granted to all repair and maintenance operators throughout the vehicle's lifetime for the purpose of making assessments on the condition of passenger cars.

11. Penalties

Penalties must be effective, proportionate and dissuasive. In 2001, official fuel consumption figures declared by car manufacturers were on average 8% lower than figures achieved by motorists on the road, whilst today that figure is approximately 40%. Air pollutant emissions deviations are even worse, being on average 7 times higher than existing NOx limits¹⁹. This is despite the fact that according to Regulation 715/2007, Article 5, car manufacturers are obliged to ensure that cars in normal use comply with type approval results. That noted, EU regulation does not define 'normal use' and thus car makers have claimed that using certain strategies to reduce fuel consumption and emissions (such as switching off air conditioning units and overinflating tyres) during official tests are permissible, even if such strategies utilised in combination mean real world performance cannot match official test results.

We recommend:

- If a car is not in compliance with legislation, administrative fees as well as penalties should be charged to the manufacturer. Both, the administrative fees and the penalties should be earmarked to finance other inspection measures in the future. It will therefore be crucial that the financial penalties will be high enough to better equip market surveillance authorities with sufficient financial means.
- Specific to fuel consumption and emissions, if deviations between type approval and conformity test results are discovered, the car maker must expect a financial penalty and should be forced to change the official figures declared to the public. Here, we support the requirements under Article 91 and the applicable changes needed to Regulation 715/2007. However, the Commission should also develop a clear 'not-to-exceed' limit for on-the-road fuel consumption and CO₂ conformity testing purposes to ensure that what is considered as 'representative' is clearly defined.
- Amending the title of Article 91 : '... the manufacturer shall correct all relevant information recorded in the type approval certificates, certificates of conformity, and the car label (as required under Directive 1999/94/EC).'

12. Recalls

The ongoing recall of Volkswagen Group vehicles across Europe due to the use of a defeat device has raised some serious concerns about recall procedures and requirements on Member States, the Commission, car manufacturers and dealers. One of the main problems that consumers have faced is that there are no harmonised procedures for recalls across the EU: it was not entirely clear to the public whether the recall of the German competent body KBA was binding or voluntarily and whether the decision of the KBA would be valid only for Germany or for the whole EU. Consumers had also to face inadequate information and were lacking clarity about the effect of the recall on the performance of their vehicles as well as the timelines and the potential customer support.

¹⁹ ICCT (2015) [Real World fuel consumption and CO₂ emissions of passengers in Europe](#); ICCT (2014) [Real world exhaust emissions from modern diesel cars](#); See the BEUC (2015) paper on '[The Great Fuel Consumption Scam](#)' that includes information about legal cases brought against car makers in other jurisdictions outside of the EU.

We recommend:

- **Amending Article 57 (3), sub paragraph 2,:** 'The approval authority shall carry out an evaluation to verify whether the proposed remedies are sufficient and timely enough, and it shall communicate the remedies that it has approved to the approval authorities of the other Member States and to the Commission without delay, and make publically available a full report of the evaluation findings and proposed remedies.
- **Adding under Article 57:**
(4) Where an approval authority or the Commission considers that the remedies referred to in Article 57(3) are sufficient, the manufacturer shall ensure that all relevant information about the measures that will be taken is communicated, within one month, to all owners of affected vehicles across the Union, and in all relevant EU languages.